Plan to revive Texas' corporate tax breaks adds more lucrative relief (houstonchronicle.com)

Plan to revive Texas' corporate tax breaks adds more lucrative incentives, eases job requirements

The Republican-backed plan to revive Texas' largest corporate tax break program closely mirrors its predecessor, Chapter 313.

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Heavy industry in Mont Belvieu, where many facilities have received property tax breaks under the Chapter 313 program.

Mark Mulligan, Houston Chronicle / Staff photographer

Texas Republicans on Monday unveiled a plan to revive the state's largest corporate tax break program with legislation that would make the incentives more widely available and more lucrative; water down prior job creation and wage requirements; and exempt "grid reliability" projects — including various natural gas facilities — from most of the program's key guardrails.

IN-DEPTH: Texas doles out $31 billion in property tax breaks for business as Chapter 313 expires

The proposal closely mirrors Chapter 313, the defunct law that expired at the end of last year after lawmakers failed to extend it. That program gave manufacturing and energy companies a decade of steep discounts on their school property taxes in order to lure them to Texas over other states.

The revived version, known as House Bill 5, would provide more lucrative incentives overall, including provisions that appear to waive all school district maintenance and operations tax payments while a project is under construction, make not just new facilities but expansions eligible for subsidies, and increase the size of the firms' tax breaks compared to its predecessor program.

Critics of Chapter 313 noted that the new program would use identical criteria in deciding whether a firm deserves the subsidies, which a 2021 Chronicle investigation found did not prevent incentives from going to companies that would have come to Texas regardless. The Chronicle also revealed that lawmakers had repeatedly undercut the program's job and wage goals by weakening requirements for companies — a key part of lawmakers' decision to let Chapter 313 lapse.

The new program would never expire, or "sunset," ensuring it could not meet the same fate.

"We wouldn't even be here if not for the sunset provisions of 313," Dick Lavine, a senior fiscal analyst at the left-leaning think tank Every Texan, told a panel of House lawmakers Monday. "And once this passes with no sunset, there's no incentive for anybody to ever come back. That is just a mandatory provision that I think you should have."

The Chapter 313 redux would exclude renewable energy projects, the source of most applications under the old program. Yet, about 75 percent of actual tax breaks — worth a projected $31 billion over the life of all active projects — will go to manufacturers, including some of the world's largest oil and gas companies.

Excluding solar and wind energy projects is thought to be a key condition needed to win the support of powerful Republicans, including Lt. Gov. Dan Patrick, who played a major role in Chapter 313's demise two years ago. Earlier this year, Patrick said the program had been "misused" to excessively benefit "renewable windmills."

Gov. Greg Abbott also said recently that he does not want renewable energy projects to be eligible under the revived program.

The latest version of the legislation comes about five weeks after lawmakers filed an earlier draft that was missing many key details, such as caps on the length or amount of the tax breaks. House Bill 5 would keep the stated subsidy period at 10 years, but also would extend the tax breaks into the construction period.

The measure is being supported by scores of local chambers of commerce and other business organizations, whose leaders argue that Texas needs some type of corporate incentive program to remain competitive with states that offer their own tax breaks. Bob Harvey, president and CEO of the Greater Houston Partnership, said other states "have taken notice of our success and become much more aggressive in the incentive packages that they craft to attract new companies.

"While we don't have to match those incentive packages point by point, we do need to have a robust program in place to keep us competitive," Harvey said at a Monday committee meeting where lawmakers heard hours of testimony on HB 5.

The updated legislation requires projects to create at least 50 jobs, double the prior requirement of 25, if they're located in one of the 10 Texas counties with a population of 750,000 or more. But just 4 percent of the 900 active Chapter 313 projects are in those areas. In most counties — those with populations between 25,000 and 750,000 — the minimum job requirement would be reduced from 25 to 20.

Companies would also have more latitude to reach the job-creation floor, through a provision allowing them to count the hours worked by several part-time workers as one full-time job, as long as the combined hours top 1,600 a year. They could also count 10 temporary construction jobs as one permanent full-time job, and would no longer be required to provide health insurance as Chapter 313 previously required.

And, while the bill does not revive a Chapter 313 provision that allowed jobs rules to be waived, HB 5 would weaken wage targets for workers at subsidized sites, from 110 percent of the local average manufacturing wage to 100 percent of the local average wage for all jobs.

Broadened eligibility

HB 5 would vastly expand the types of industries and projects eligible for incentives, letting tax breaks flow not just to new facilities but also plant expansions. It would invite applications from new types of huge projects, such as water infrastructure, power plant upgrades and natural gas storage.

State Rep. Morgan Meyer, a Dallas Republican who is a key supporter of HB 5, said he did not understand why companies would need incentives to build natural gas and water storage, since those types of projects are all but inevitable — in other words, tied to existing infrastructure like gas pipelines.

The Chronicle found that Chapter 313 subsidized a number of projects that energy analysts said were inevitable, including at least 36 “fractionators,” a type of facility that splits natural gas liquids into their separate components after they’ve left the processing plant. Such facilities are needed to make gas liquids usable.

“One of the main arguments, you might remember from last session, is, these projects are coming here anyway,” said Meyer, who chairs the tax-writing House Ways and Means Committee. “Well, I can tell you these are going to come here anyway, because they're necessary for the project. … I can already see the argument.”

Natural gas plants and fractionators qualify as “grid reliability” projects under HB 5, meaning they would be exempt from any requirements related to jobs, investment or the possibility that the project could go elsewhere.

The new initiative would also grant more lucrative tax breaks than those most companies received under Chapter 313.

In most Texas counties — excluding the 10 largest — the maximum taxable value during the tax break period would be $14 million. Of the 900 active deals under Chapter 313, just 8 percent have lower taxable values.

Lavine, a leading critic of Chapter 313 and the effort to revive it, said HB 5 contains "no exacting test to see if the incentive is even necessary" to lure a project to Texas.

Under the bill, the Texas Comptroller's Office would still be charged with reviewing applications and recommending that school boards approve essentially the same two hurdles that nearly every Chapter 313 easily cleared: The tax break must be "a determining factor" in the company's decision to locate the project in Texas instead of another state or country, and the company's total subsidy must be exceeded by the taxes produced in the years after the incentives stop flowing.

Yet comptroller staff themselves acknowledged it was "impossible" to apply the "determining factor" language to weed out projects that never intended to build outside Texas. And HB 5 would lengthen from the post-subsidy comparison period from 15 years to 25 years.

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